

APPLICANTS:**David & Janet McMillan, Lois Mingo**

REQUEST: A modification of a special exception for motor vehicle repair shop approved in Board of Appeals Case Nos. 3693 and 4974 to modify the approved site plan and enlarge the existing building

HEARING DATE: August 29, 2005**BEFORE THE****ZONING HEARING EXAMINER****FOR HARFORD COUNTY****BOARD OF APPEALS****Case No. 5488****ZONING HEARING EXAMINER'S DECISION****APPLICANTS:** David and Janet McMillan**CO-APPLICANT:** Lois T. Mingo

LOCATION: 2824 and 2852 Dublin Road, Street
Tax Map: 18 / Grid: 4E / Parcel: 162; 65
Fifth (5th) Election District

ZONING: AG / Agricultural

REQUEST: A modification of a special exception for motor vehicle repair shop approved in Board of Appeals Case Nos. 3693 and 4974, pursuant to Sections 267-52B and C of the Harford County Code, requesting permission to modify the approved site plan and enlarge the existing building.

TESTIMONY AND EVIDENCE OF RECORD:

David McMillan, Applicant, testified that he operates a business known as Harford Custom Coach Works, located at 2852 Dublin Road, Street, Maryland. This use is operated on an approximately 3.9 acre parcel, zoned Agricultural, and is improved by a single-family detached dwelling and two shop buildings.

Mr. McMillan was originally given approval for a special exception to operate a motor vehicle repair shop in Case No. 3693, dated March 9, 1989. (See Attachment 12 to Staff Report). Subsequently, this original approval was modified by the Board of Appeals in Case No. 4974 dated January 13, 2000. (See Attachment 13 to Staff Report). According to Mr. McMillan, Case No. 4974 granted the Applicants approval to construct a shop building and to modify the site plan.

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Mr. McMillan explained that his present request is to modify approvals previously granted, by allowing him to construct a 38 foot by 36 foot addition to his shop, and an additional 32 foot by 32 foot addition which would be utilized as office space. Mr. McMillan's parking would also be somewhat modified. These changes are shown on the site plan submitted by the Applicant. Mr. McMillan justified his request by his need for additional office and storage space. He also intends to use and construct two more bays in the new addition.

Mr. McMillan described his request as being motivated in part by the fact that the office on the front of his building, as originally constructed, apparently was not built in the proper location. Instead of requesting a variance in order to correct the improperly located addition, Mr. McMillan and his neighbor Ms. Mingo have agreed to exchange land. The land which the Applicant is receiving from Ms. Mingo is sufficient to cure the setback violation that existed with the storage building.

With the Mingo addition, Mr. McMillan's parcel will be 3.9 acres in size. As of the date of the hearing, the actual land exchange had not yet taken place. The lands to be exchanged are shown on the site plan submitted with the Application.

Mr. McMillan also plans to relocate the entrance to his property. The new entrance would be on the property which is being acquired from Ms. Mingo. Mr. McMillan has spoken to a representative of the State Highway Administration who agrees that the relocated driveway will be an improvement, affording a better sight distance along Dublin Road.

Mr. McMillan stated that he is requesting no changes in the way his business is currently operated and approved. He is asking for additions to the existing shop building. He will be conducting office business from the additions. He will also be using the 38 foot by 36 foot addition for storage for frame equipment, and to allow him to keep more of his operation indoors. He believes the requested modifications would have no impact on anyone. His business will be conducted in the same way as it has in the past. He believes no one other than Ms. Mingo will be able to see the additions. The requested modifications will merely allow him to conduct more of his business inside.

Mr. McMillan gave names and addresses of a number of people in his neighborhood with whom he had spoken about his request. Mr. McMillan testified that none of these individuals had any objection. He also submitted letters from individuals who were unable to attend the hearing. Those letters were offered as Applicants' Exhibits 8 and 9. Mr. McMillan stated that he has not received any complaints from his neighbors regarding the business that has been conducted on the premises. He explained that he had received complaints about a dirt track which was located behind his property and used by kids in the neighborhood. When he received complaints he discontinued the dirt track.

Mr. McMillan stated that he agrees to abide by all the conditions recommended by the Harford County Department of Planning and Zoning, which includes all conditions imposed in the prior zoning cases.

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Mr. McMillan was then examined by Deborah Felix, 2859 Dublin Road, Street, Maryland. Mr. McMillan explained that he has seven (7) employees on-site, plus two (2) part-time employees. In response to a question from the Hearing Examiner, Mr. McMillan stated that the “variance” was granted for a small business to operate on his property, to do automobile repair work. Since that time the business has grown considerably.

Mr. McMillan explained that his business works on all types of vehicles, including police cars, ambulances, and fire trucks. He wants to keep all of this equipment inside so the neighbors won’t be bothered. He will continue to maintain a storage area in the back, which is screened.

Mr. McMillan stated that he now has a 10 foot by 10 foot space which he uses as an office. It is cramped when used for meetings with his employees. He needs a larger facility to meet with his employees and also to meet with customers. This new office will be constructed in the front of the building. That location is not visible from Ms. Felix’s property, according to Mr. McMillan.

Mr. McMillan also stated that he has painting bays within his building.

Mr. McMillan, in response to an inquiry as to what use will be made of the 10 foot by 10 foot space which is now used as an office, stated that it will remain as storage space, with a computer and other computer equipment. The larger addition will be used for business purposes, to allow his business to be more efficient. Mr. McMillan believes that perhaps the business will be able to increase. However, his principle reason for requesting a modification is to keep everything indoors so the neighbors will not complain, allowing him to conduct his business more efficiently.

Mr. McMillan explained that his seven employees each have a car. Accordingly there will be seven employee cars on-site. Mr. McMillan also has nine vehicles of his own. There also would be ten cars awaiting repairs, plus whatever is in the shop being repaired. Of the nine vehicles owned by Mr. McMillan, four are used in his business. Those are two rollbacks, a shop truck, and an estimate truck. He does not plan to increase the number of the vehicles related to the business or maintained on the property.

Mr. McMillan was then examined by Jocelyn Allen, who resides at 2910 Dublin Road, Street, Maryland. Mr. McMillan stated that he began to paint cars in 1983. Ms. Allen then stated that Mr. McMillan was in violation of Zoning Appeal Case No. 3693 and has been cited by the Maryland Department of the Environment, Hazardous Waste Division. She then asked Mr. McMillan if he had been cited. He responded that he had not been, to his knowledge. Mr. McMillan stated in direct response to a question from the Hearing Examiner that he had not been cited by the Maryland Department of the Environment for any violation.

Ms. Allen then stated that there was an on-going investigation involving the Maryland Department of the Environment. However, she had no documentation on that.

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Next was called Lois Mingo by the Applicant. Ms. Mingo verified that she was in the process of exchanging property with Mr. McMillan. She has no objection to his application. She believes that Mr. McMillan has been a good neighbor, and operates his business in a responsible way. He has caused her no trouble.

Next by the Applicant was called Kevin Knight, who resides at 2860 Dublin Road, Street, Maryland. Mr. Knight lives next door to the McMillan property. He grew up on his property and built a home there in 1990. He has no objection to Mr. McMillan's request. His business has never bothered Mr. Knight in any way. He believes Mr. McMillan has been a good neighbor. Upon cross-examination by Ms. Allen, Mr. Knight indicated that he was familiar with the effects caused by the chemicals used on Mr. McMillan's property.

Next for the Applicant testified Jener Knight, who resides at 2868 Dublin Road, Street, Maryland. Mr. Knight's property is due east of that of the Applicant. Mr. Knight has no objections to Mr. McMillan's operation, adding that he has been a good neighbor.

Next was called Elaine Knight, who resides at 2868 Dublin Road. Mrs. Knight agreed with her husband's testimony. She has no objection to the proposed use and believed Mr. McMillan to be a good neighbor.

Next by the Applicant was called Darlyne Belcher, of 2900 Dublin Road, located about three doors down from Mr. McMillan's property. She has lived there for 13 years, and has no objection to Mr. McMillan's request. The business has never bothered her in any way, and he has been a good neighbor.

Ms. Belcher also stated that if the ground water were contaminated by Mr. McMillan's operation she would want the operation shut down. However, she does not believe it is contaminated.

Next for the Applicant testified George Dawson, who resides at 2902 Dublin Road. Mr. Dawson has lived on his property for 13 years. He has no objection to the relief being requested. His operation has never bothered Mr. Dawson. Mr. McMillan has been a good neighbor.

Next for the Applicant testified Keith Schmidt, of 2904 Dublin Road, Street. Mr. Schmidt has lived in his property for nine years. He has no objection to Mr. McMillan's request. He believes Mr. McMillan has been a good neighbor. In answer to a question from Ms. Allen, Mr. Schmidt stated that his wife has leukemia. Upon cross-examination, Mr. Schmidt indicated that he never noticed any objectionable odors emanating from the McMillan property.

Next for the Applicant testified William Marshall Dupree, who resides at 3926 Dublin Road. Mr. Dupree has lived at his property for 48 years, and has no objection to Mr. McMillan's request.

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Next testified Margaret McMillan, sister of the Applicant David McMillan. She lives on the property owned by her brother. She has no objection to his use.

Next testified Scott Sebring, who resides at 2855 Dublin Road, Street, directly across Dublin Road from the McMillan's property. Mr. Sebring has no objection to the requested expansion of Mr. McMillan's repair business.

Next for the Applicant testified Kay Lana Gorrera. Ms. Gorrera lives at 2867 Dublin Road, approximately 300 to 400 feet from the McMillan property. Mr. Gorrera has no objection to the requested use.

Next for the Applicant testified Marjorie Sexton, who resides at 2869 Dublin Road. Mrs. Sexton stated that she and her husband had in the past received special exception approval to park their tractor-trailer on their property. They understand Mr. McMillan's request, and have no objection to it. They believe he has been a good neighbor.

Next for the Applicant testified Marian Halsey. Ms. Halsey lives approximately 400 feet from the McMillan property. She has never experienced any problems with Mr. McMillan's operation. She has no objections to this business, and she has never experienced any odors coming from the property.

Next for the Applicant testified Rowan Glidden, a registered landscape architect, and Vice-President and part owner of CNA, Inc. Mr. Glidden is familiar with the property, and the application. Mr. Glidden is familiar with the Harford County Zoning Code, specifically including Section 267-9I of the Code.

Mr. Glidden gave his professional opinion that the use described by Mr. McMillan complies with all requirements for special exception approval as a motor vehicle repair shop. This use is compatible with others permitted as of right in the Agricultural District. Mr. McMillan's use is no more adverse to other properties than would be farming operations and other intensive uses which are allowed as principle uses.

It is Mr. Glidden's opinion that the use of the property as described by Mr. McMillan will not generate any adverse effects different in character or intensity from the effect inherent in the operation of a motor vehicle repair shop located elsewhere in the Agricultural District. Mr. Glidden based this opinion on his belief that there is nothing particular about the site which would create a greater adverse impact. The land swap between the Applicant and Ms. Mingo will create more space between the use of the property and the neighboring properties. Mr. Glidden is aware of no zoning violations against Mr. McMillan.

Mr. Glidden described other activities in the neighborhood which create impacts, including Scarborough Landfill. Trucks to Scarborough use Route 440 as their main access route. He believes that the business can be properly screened from adjoining properties. He believes that no one other than Ms. Mingo will be impacted by the construction of the additions.

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Mr. Glidden believes that moving the entrance way will result in a safer entry point onto the property from Route 440. The additional width of the new entrance will also minimize the traffic impact in and out of the property onto Route 440. All conditions as set forth in the Staff Report are appropriate, in Mr. Glidden's opinion.

Upon cross-examination by Ms. Felix, Mr. Glidden stated that he had been involved in other motor vehicle special exception cases, the closest one being the Sexton property. Mr. Glidden believes he was also involved in other similar cases.

Mr. Glidden stated that by Code, a motor vehicle repair service use is allowed within the agricultural zone as long as it meets the requirements of the special exception. He believes that Mr. McMillan had met those requirements in 1989, updated in the year 2000. He is now requesting a modification to the site, not the use.

Mr. Glidden is not aware that any tree or other vegetative planting was planned for the east side of the property. Ms. Allen, during her cross-examination of Mr. Glidden, stated that she can see Mr. McMillan's building, his house, and his workshop.

In closing, Mr. Glidden was offered as an expert land planner, and accepted as such.

Next for the Harford County Department of Planning and Zoning testified Dennis Sigler. Mr. Sigler explained that Mr. McMillan came to the Department originally seeking permission to have a separate office from the repair shop. He stated that his insurance company would not allow the office to be in the existing building. Mr. Sigler stated that the Department's response was that a modification of the existing case was necessary.

The Department is of the opinion, after an on-site inspection, that the requested changes to the building would not have any adverse impact on the neighborhood or the overall use of this property. The land exchange with the adjoining neighbor has actually improved the situation. Furthermore, the proposed new entrance is an improvement over that which currently exists as the sight distance is much better.

Mr. Sigler further stated that he believes Mr. McMillan is in conformance with the existing conditions concerning screening.

Mr. Sigler was then examined by Ms. Allen. Mr. Sigler stated that the subject property was not currently the subject of any zoning violations.

In opposition then testified Deborah Felix, who resides at 2859 Dublin Road, Street. Her property is across the street from the McMillan property. Ms. Felix has been living in the neighborhood since 1964.

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Ms. Felix smells fumes emanating from Mr. McMillan's business. Ms. Felix believes that limitations should be placed on Mr. McMillan's business as it continues to increase in size. It is a full-blown commercial entity now. The neighborhood, in her opinion, has become more residential. There is much new development going in. She also stated that the trucks to Scarborough Landfill do not go pass her intersection of MD Route 440, as they have been re-routed.

Ms. Felix stated that she is trying to maintain the residential integrity of the community. She feels that with the increased activity on the McMillan property, that it is a commercial property, out of keeping with the neighborhood. She objects to the increased number of cars on the property, cars which far exceed the numbers which were originally allowed when the variances were first approved. Ms. Felix has taken pictures and counted twenty-three vehicles on the property. Ms. Felix believes the additions proposed by Mr. McMillan will only serve to increase his business.

Next testified Jocelyn Allen, who resides at 2910 Dublin Road, Street, approximately 600 feet east of the subject property. Ms. Allen testified that she can hear noise from the repair shop. It is annoying. She can also smell fumes coming from it. She does not believe that the Applicants should be allowed to expand while he is under investigation by the Maryland Department of the Environment, Hazardous Waste Division.

She wants the building sound-proofed. She does not like to hear the noise coming out of the garage building. She wants the doors kept closed. She wants something done about the odors that come out of the painting bays.

She feels her property has been devalued by 10 percent. If her drinking water has been contaminated, the value of her property decreased by 90 percent. She also wants the Applicant to install monitoring wells around the facility.

The witness testified she wants the Applicant to follow the law, to do what he is required to do.

Mr. McMillan was then called in rebuttal. He stated that the Felix property is not actually directly across from his property. Her property is down the road across from the Knight property.

Ms. Felix then testified, again, that she smells the fumes emanating from the Applicants' property on her property. She also hears a lot of noise coming from the garage.

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APPLICABLE LAW:

Section 267-52B and C of the Harford County Code states:

- “B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.”*

The Applicants must also meet the requirements of Section 267-53D(3) of the Harford County Code, which states:

- “(3) Motor vehicle repair shops. These uses may be granted in the AG and B1 Districts, provided that:*
 - (a) A buffer yard at least 10 feet wide shall be provided along any adjacent road right-of-way or adjacent residential lot.*
 - (b) The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.*
 - (c) Unless Board approval is granted, accessory buildings and outdoor storage of vehicles, tires and equipment shall be prohibited.*
 - (d) The operator of the shop shall maintain a log of all vehicles repaired. For each vehicle, the log shall include the vehicle identification number and a description of the vehicle and identify the dates the vehicle arrived and was removed. The log shall be available for inspection during normal business hours. If no log exists, it shall be assumed for the purposes of Section 267-39C(7)(f) that each vehicle has been stored on the property for 90 days.*
 - (e) The rental or storage of trailers, boats and trucks shall be prohibited.*
 - (f) Proposed outdoor storage areas and refuse storage areas shall be fenced or screened from adjacent properties and shown on the site plan submitted for Board approval.*

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- (g) *Materials, textures, colors and designs of fences, walls, and screening shall be compatible with the on-site development, adjacent properties, and the neighborhood. When a wall is required, a planting strip at least 5 feet wide shall be provided also and shall include trees and shrubs that are at least 2 feet high when planted and that may be expected to form a year-round dense screen within 3 years. The location and species of trees and shrubs used for screening shall be chosen with consideration for the size of the trees and shrubs at maturity. Fences, walls, screening, and planting strips shall be located so that they do not constitute sight obstructions for the drivers of vehicles entering or exiting the parcel or any adjacent lot or parcel.*
- (h) *The fumes, odors and noise from the vehicle-related work shall be minimized.*
- (i) *A minimum parcel area of 1 acre shall be required.*
- (j) *In the AG District, the use shall be operated by the resident of the property.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Superficially, at least, this case requests a simply request to modify earlier Board of Appeals decisions. Those earlier decisions granted and subsequently modified a special exception to operate a motor vehicle repair shop. The original decision also granted a variance for the structure to exceed fifty percent of the square footage of the dwelling, and to allow a setback of 9 feet from the side yard and 68 feet from the rear yard. The first decision in 1989 imposed a series of conditions, as follows:

1. That the Applicants obtain all necessary building permits and zoning certificates for any construction or use of the land.
2. That the Applicants have the Health Department monitor the property for noise and air quality.
3. That the Health Department approve the deposition of any chemical used in the business.

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4. That the hours of operation be limited from 6:00 a.m. to 7:00 p.m., Monday through Saturday, provided that the Applicant minimizes fumes, odors and noise.
5. That no outside storage of parts shall be permitted.
6. That not more than eight (8) cars be permitted to be stored or parked upon the property, excluding the personal vehicles owned by Mr. McMillan and his family.
7. That evergreen plants be placed along the side and rear property lines on 8 to 10 foot centers, with a minimum height of two (2) feet at the time of planting, pursuant to a plan approved by the Department of Planning and Zoning.
8. That no vehicles shall be placed in the front yard of the property.
9. That all outside lighting shall be directed away from adjoining residences.
10. That the proposed addition be located as set forth on the Applicant's Exhibit and shall be limited to 482 square feet.
11. That all customer vehicles and vehicles of independent contractors or employees are parked behind the garage building and screened so as not to be visible from any adjoining property or public road.

By decision dated November 17, 1999, Case No. 4974, the Applicant requested a modification of the 1989 decision to allow him to expand his business by erecting a 60 foot by 80 foot shop building.¹ That decision was based upon the Applicant's testimony that the modification of the existing use was requested in order to reduce the impact by allowing all repairs to be performed inside. The requested modification was accordingly granted, with a series of additional conditions:

1. That the Applicants prepare a detailed site plan that reflects required setbacks, existing and proposed improvements, parking and vehicle storage areas, and screening to be reviewed and approved by the Department of Planning and Zoning.

¹ The testimony in Case No. 4974 was that "no variance of the provisions of the Code regulating the size of the accessory structure was required." The Hearing Examiner, in his Conclusion, stated that as the motor vehicle repair shop was a separate principle use under the Code, the provisions of Section 267-26C(1) of the Code do not apply. Accordingly, a variance for the size of the shop building requested is not necessary.

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2. That the Applicants shall plant a double staggered row of evergreens along the western property line. These trees shall be planted on 8 to 10 foot centers and be a minimum of 3 to 5 feet in height at the time of planting.
3. That the number of vehicles waiting for repair shall be limited to ten (10). This does not include employee vehicles or personal vehicles owned by the Applicants and their family.
4. That all other conditions of approval in Board of Appeals Case No. 3693 shall remain in effect.
5. That the Applicants shall obtain all necessary permits and inspections for the new building and parking/vehicle storage area.
6. That the proposed storage and parking area shall be paved with an all-weather surface.

The Applicant now requests permission to construct two additions onto his existing shop building, one being a 38 foot by 36 foot shop addition, and the other a proposed 32 foot by 32 foot office addition. The Code also requires that the site plan be amended. Again, the Applicant gives as his reason the need for increased interior work space.

Again, at least superficially, this application is not unusual. Motor vehicle repair shops are specifically allowed by the Harford County Zoning Code as special exceptions in agricultural districts, which would include the subject property. Special exceptions are presumptively allowed, provided no particular adverse impacts are generated at the site proposed. The requirements of the applicable special exception section, being Harford County Code Section 267-53D(3), appear to be relatively easily met. The use will be on an almost four acre sized property, on which has been an active vehicle repair shop for some 15 years. The use is located in an agricultural/residential area, in a rural-residential area of Harford County.

Accordingly, there are no obvious unusual factors which would lead a casual observer to believe the use to be anything more than an ordinary special exception for which the operator requests some relatively minor modification.

Such an observation, unfortunately, would not be accurate. During the hearing of this case it became quickly apparent that this is a use which has galvanized and embittered its surrounding neighborhood, and has divided those neighbors into two different camps, those in favor (or at least not against) the use, and those stridently and absolutely against it. Indeed, it can be said with some assurance, that seldom has a case been heard in which neighbors have been so divided in such a rancorous and unpleasant fashion.

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No doubt that rancor and bitterness will continue regardless of the decision in this case, as the only issue at present is a request to expand the shop and office building. The underlying special exception will continue, regardless of the decision on this issue. If the maintenance of neighborhood peace and harmony were one of the conditions for the review of a special exception application, then this decision would be an easy one to make. No doubt, it should be denied completely if the goal of the Board of Appeals were to encourage neighborhood amiability. However, such a consideration is not a part of the applicable standard.

While the neighbors are not entitled to a vote on this zoning case, nor can the Board of Appeals count heads in order to decide whether to grant or deny a particular application, the feelings of the community are nevertheless important and are to be respected. Most significantly, the community feelings can be most helpful in determining whether there is an adverse overall impact of the use proposed at the subject site. In the instant case, this becomes an exercise that is particularly worthwhile as the use has been in operation for some 15 years, and the neighbors have had an opportunity to observe that use for those years. Accordingly, the opinions are not speculative, but are based on fact, supported by the neighbors' every day observations over those years. Consequently, the opinion of the neighbors who testified is important, and is to be given weight in determining the overall character of impact on the neighborhood.

The great majority of the neighbors who testified believed that the use as it has been conducted has no adverse impact; that the Applicant is a good neighbor; that he conducts his operation with regard to the neighbors; and his proposed modification will not impact them. Again, this important substantive evidence and is entitled to weight. While certainly not determinative, these opinions are illuminating and must be considered.

On the other hand is the testimony of Jocelyn Allen and Deborah Felix, two neighbors who reside close by the subject property, and vehemently oppose the application.

While the opposing neighbors' testimony was fairly broad, their primary objections were to the potential impact on the ground water by hazardous waste allegedly being generated by the proposed use, and that the continuing use of the property is an improper expansion beyond original approval.

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Addressing their first complaint, the objecting neighbors were unable to show any actual contamination caused by the motor vehicle repair shop. After being in existence for some 15 years, no evidence was put forth to show any measurable contamination. The Harford County Department of Planning and Zoning has given a favorable Staff Report, and makes no mention of the generation of environmental hazards. The opponents submitted no reports from the Maryland Department of the Environment of hazardous material measurements or findings.²

Secondly, the arguments of the opponents as to environmental contamination must fail as jurisdiction over these issues is not with the Harford County Board of Appeals. Clearly the Maryland Department of the Environment has proper jurisdiction. Simply put, the statutory framework which governs hazardous materials of the type used by the Applicant has been promulgated by the State, not the County. The State is accordingly responsible for enforcement of those regulations, and has preempted that area. While the Board of Appeals has the right to deny an application that represents a real or potential threat to the environment, the administration and enforcement of current state statutes and regulations are by the State and its administrative agencies. The application cannot be denied simply because an opponent believes a particular State agency has not properly exercised its regulatory authority or, on the other hand, an applicant may not be in full compliance with State requirements. The enforcement mechanism which determines those issues is at the State, not the County, level.

The remaining argument by the opponents that the Applicant has expanded beyond its original approval has, however, substantial merit. This is the third in a series of zoning applications filed by the Applicants beginning in 1989. A review and discussion of those cases is important in order to properly understand the history of the case, and the use as originally proposed and approved and subsequently modified by the Board of Appeals.

² Jocelyn Allen was given the opportunity, somewhat unusually, to file a Brief and to supplement the record, post-hearing. Ms. Allen took that opportunity by a filing on October 24, 2005 (which was well beyond the 20 day period she had been given to supplement the record). Her submittals included a copy of a “Complaint” dated October 5, 2005 by the Waste Management Administration of the Department of the Environment. Even assuming, arguendo, that such a document is one which should properly be considered, it does nothing to support the complaints of the protestants that hazardous waste is being generated by the subject property in a way that could cause a threat to ground water or air. The “Complaint” appears to be a citation for failure to have a written description of the procedures to be utilized by the Applicant, and failure to implement procedures for storing hazardous waste in accordance with applicable standards. No finding of actual or even potential contamination is made therein.

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Case No. 3693, with recommended Decision dated February 17, 1989

The Hearing Examiner was clear concerning the conditions which he imposed. Two of those conditions are highly pertinent to this discussion. The first is Condition 6 which states:

“That not more than 8 cars be permitted to be stored or parked upon the property, excluding the personal vehicles owned by Mr. McMillan and his family.”

A review of the decision indicates that the Hearing Examiner refused to accept the recommendation of the Department of Planning and Zoning that 9 cars be permitted to be parked on the property. The Hearing Examiner stated:

“9 cars upon the property is excessive in light of the rural residential character of the neighborhood and its proximity to adjoining residences.”

The Hearing Examiner stated:

“. . . the total number of vehicles to be permitted to be stored upon the property, excluding the Applicants’ personal vehicles, would be 8. This would allow 5 customer vehicles to be parked or stored upon the premises and 3 vehicles for each of the independent contractors. While this may prove to be an inconvenience, if the Applicant hires a 4th independent contractor, the Hearing Examiner believes that this limitation is necessary to protect the surrounding properties.”

Accordingly, it can be seen that the 1989 decision limited the Applicant to a total of 8 vehicles involved with the business. These did not include Applicants’ personal vehicles, but would include the personal vehicles of his independent contractors/employees and vehicles awaiting or under repair, which would be 1 vehicle being repaired by each of 3 independent contractors.

Any reasonable review of this opinion would lead an objective observer to the conclusion that a relatively minor motor vehicle repair operation was being proposed for the subject property which, in fact, was also used as the Applicants’ residence. The Applicant at that time employed 3 independent contractors (see Page 1 of the Zoning Hearing Examiner’s Decision). The Applicant was utilizing a 30 foot by 30 foot block building, to which he was adding an approximately 38 foot by 11 foot by 18 foot addition to provide a “office and storage facility”. The Hearing Examiner was obviously concerned about the impact on the community as he rejected the Department of Planning and Zoning’s recommendation that a total of 9 vehicles be allowed to be parked on the property. No mention was made of other vehicles owned by the Applicant and used in the business, nor was approval sought for the parking of other vehicles on the property.

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Case No. 4974, with recommended Decision dated November 17, 1999

This case was a request to expand the business by erecting a 60 foot by 80 foot shop building, and to modify the approved site plan. The reason given for the request was to minimize outdoor impact by allowing all repairs to be performed inside the new building:

“(Applicant’s witness) noted that Mr. McMillan’s business has been in operation at the subject property for about 10 years. He explained that the Applicants are merely requesting a modification of the existing use which will reduce impact by allowing all repair to be performed inside.”

Of note is the statement of the Hearing Examiner at page 6 of that Decision which states:

“The Applicant did request a modification of the conditions proposed in the Staff Report to allow an outside storage area. However, the Hearing Examiner does not find a basis for allowing an outside storage area since the Applicant is substantially increasing the size of the building used in the motor vehicle repair operation.”

The Hearing Examiner went on to grant approval of the requested expansion of the building, with the following pertinent conditions:

- “3. That the number of vehicles waiting for repair shall be limited to 10. This does not include employee vehicles or personal vehicles owned by the Applicants and their family.*
- 4. That all other conditions of approval in Board of Appeals Case No. 3693 shall remain in effect.”*

It can accordingly be seen that, with little or no explanation, the Applicant was allowed by this decision to increase the number of vehicles allowed on site from a total of 8 vehicles to 10 plus personal vehicles for employees and the Applicant. No mention whatsoever was made of additional vehicles used by the Applicant in his business. The increase from 8 to 10 vehicles is odd given the apparent failure of the Applicant in Case No. 4974 to request a modification of conditions, other than a request to allow to expand the building by erecting a new shop building and to modify the approved site plan. Furthermore, the decision, while it appears to limit the number of vehicles “waiting for repair” to 10, makes no mention of other vehicles which may be parked inside the shop building, which by this time consisted of the original 30 foot by 30 foot block building built in 1982, the 38 foot by 11 foot by 18 foot building built by Board decision in 1989, plus the newly approved 60 foot by 80 foot shop building.

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While the findings and conclusions of the Hearing Examiners in the prior two cases cannot now be overturned, they certainly give rise to the inescapable conclusion that what began as a relatively low key, 3 employee operation in a relatively confined space, with no more than 8 vehicles on the property at any one time, has expanded greatly by the allowance of additional, large buildings, and a virtually unlimited number of vehicles which can now be stored in and repaired within the building. Furthermore, as testimony in the case now before the Board makes clear, the Applicant now has a total of 4 vehicles parked on the property that he uses in his business, including two tow-truck type vehicles, which he apparently does not count in his 10 vehicle total. Instead of the three original “independent contractors”, the Applicant states that he now has 7 employees. The Applicant also testified that, additionally, he has 9 “personal” vehicles on site, which do not count against his total.

This is a case which has caused the Hearing Examiner great concern, and has been unusually difficult to decide. The contentious and deeply held, and varied, opinions of the neighbors have camouflaged what has, in fact, been an indisputable element of the Applicant’s operation. That is, it has been expanded greatly beyond that which was originally approved in 1989, and modified in 1999, as a relatively low impact use. The Applicant has now in fact expanded to an operation which can be fairly characterized as greatly in excess in scope and intensity of what was originally permitted.³

The Hearing Examiner believes that the Applicant has been allowed to expand by perhaps, imprecisely written prior opinions, and by the Applicants’ interpretations of those decisions which allow the storage and repair of vehicles inside of the buildings without those vehicles counting towards the overall total on the site. Indeed, it is difficult to understand how, when one reads the original decision and the 1999 decision, how the small operation as presented before the Board of Appeals could now require the use by the Applicant of two roll-back vehicles, plus two other company vehicles in order to service the operation. Obviously, the intensity, scale and scope is enormous compared to that which was originally proposed and approved.

The Hearing Examiner is concerned that another increase in the size of the building, as now proposed by the Applicants, will be used by the Applicants to again increase the number of vehicles stored on-site and the resulting impact to the neighborhood. Indeed, the Hearing Examiner finds the Applicants’ testimony that he requires the 32 foot by 32 foot requested addition for office space, primarily to conduct meetings with his employees, to be less than credible. It is more than likely that this space will be used to either work on additional vehicles, store vehicles, or be used as parts and equipment storage area.

³ One of the opposing neighbors testified that she recently counted over 20 vehicles on the property.

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It is further noted that the rationale for the requested modification given in 1999 is now being used again, that is, to increase the size of interior space in order to eliminate outside work on vehicles. There is no provision in any of the prior Board opinions to allow the Applicant to work on vehicles outside of the buildings. There is no provision in any of the prior Board opinions to allow the Applicant to have 4 business use vehicles on-site. There is no mention in any earlier opinion of the Applicants having or being allowed roll-back vehicles on-site. There was no rationale in either of those prior decisions of the Applicant having 9 “personal” vehicles on the property.

The Hearing Examiner is tempted to interpret prior decisions in such a way so as to limit the Applicant to no more than 10 vehicles on-site, which would include vehicles awaiting repair, under repair, or awaiting customer pick-up, and also to include business use vehicles. The Hearing Examiner is convinced this was the intent of the earlier decisions. However, it is, at this point, unfair to interpret those decisions contrary to the way the Applicants have operated over the years and, apparently, contrary to the way the Department of Planning and Zoning has interpreted those decisions over the years. Therefore, such an interpretation will not be made. However, it is determined and found, after lengthy reflection, that the requested special exception is beyond any reasonable scope of the original request as proposed in 1989 and modified in 1999.

It is also found that the requested modification, which would result in increased traffic, intensity and scope of operations on the subject property, would be adverse to the neighborhood and more suitable for a business district than this rural-residential district of Harford County. Given the relatively small parcel size, the residential use of that parcel by the Applicants, the proximity of neighbors, the size and number of existing structures, and the large number of vehicles which are now allowed on the property, it is clear that the increased impact of the proposed use at this location is excessively beyond what one would expect at another location within the zone. As such, it must be denied.

CONCLUSION:

Accordingly, for the above reasons, it is recommended that the modification of the special exception be denied.

Date: December 19, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JANUARY 19, 2006.